

### **Remarks/Arguments**

In the current application, claims 1-20 are pending. Claims 1, 5, and 15 have been amended. For at least the reasons stated *infra*, this application is in condition for allowance, and a notice of allowance is respectfully requested.

### **Rejection pursuant to 35 U.S.C. § 103**

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenberg, U.S. Patent No. 6,692,413, in view of Debski, U.S. Patent No. 4,344,620, along with Prince, U.S. Patent No. 4,384,369, and Mayrhofer et al., U.S. Patent 6,972,029. Applicant respectfully disagrees.

#### ***A. Prior Art Must Teach or Suggest All Claim Limitations***

In order to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *See* MPEP § 2143.03. Greenberg in combination with Debski, Prince, and Mayrhofer et al., simply fail to teach or suggest all of the limitations claimed in Applicant's pending claims. As a minimum, the cited references fail to teach (1) a massage garment, (2) multiple horizontal compartments spanning the user's back, and (3) compartments capable of housing a massage tool and allowing desired movement/positioning. Because the cited prior art fails to provide sufficient teaching to render obvious Applicant's claimed invention, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection and issuance of a notice of allowance.

Looking to the four references cited, the products and devices disclosed are only remotely related to the present invention. Greenberg, Debski and Prince are all exercise garments, specifically designed to carry and house weights or weighted devices. Most notably, however,

none of the disclosed devices relate to massaging therapy, and specifically to the selective massaging of desired areas.

In addition to the shortcomings outlined above, Mayrhofer et al. is not properly used as a reference. Looking at the dates of Mayrhofer et al., the present application pre-dates any filing of Mayrhofer et al. (the present application has a priority filing date of August 19, 2002, while Mayrhofer et al. has a priority date of October 10, 2002). Thus, this is not a proper reference to support an obviousness rejection and should be removed. In addition, Mayrhofer et al. does not provide for pressure massaging in any way. Mayrhofer et al. calls for the limited placement of heating elements around a user's neck, which the Examiner apparently concludes is the equivalent to the massage tools of the present invention. However these heating elements are not capable of providing massage therapy to selected areas. Further, the structure of Mayrhofer et al. does not allow for the easy movement or manipulation of massage tools by the user to achieve appropriate positioning.

In summary, the cited references simply lack sufficient teaching to render the claimed invention obvious.

***B. Prior Art Must Teach or Suggest Combination or Modification***

The Office Action recites the combination of several references to support the claim rejections under 35 U.S.C. § 103(a). The mere fact that references contain potentially analogous components, however, does not establish obviousness of the combination absent a teaching or suggestion supporting the combination of references. *See* MPEP § 2143.01. The test is whether the combined teachings of the prior, taken as a whole, teach or suggest the combination or modification to one of ordinary skill in the art. *Id.* Applicant asserts that it is improper to combine the references, as proposed by the Examiner.

As an initial point, the use of weight/exercise garments to suggest the obviousness of a massage device is suspect. Further, the substitution of the horizontal compartments on the back of the garment disclosed by Debski for the compartments in the back of the garment disclosed by Greenberg is improper. There is simply no motivation to combine these references.

As previously stated, Greenberg discloses an exercise jacket having weights positioned in pockets specifically placed on a 45 degree angle. Moreover, Greenberg teaches away from the use of horizontal compartment, channels or chambers because it states that the “novelty is in the 45 degree of the angle of the pockets, which follows and pulls in the direction of the muscle contraction, and the specific placement of the pockets.” *See Greenberg*, col. 3, lines 54-56. Modifying Greenberg with the horizontal compartments extending from the bottom of the back of the garment disclosed by Debski would eliminate the novel aspect of Greenberg and render Greenberg “unsatisfactory for its intended purpose.” *See* MPEP § 2143.01.

In additional, Debski specifically discloses inner-connected watertight compartments surrounding the vest with very controlled openings. Obviously, fluid is utilized to provide weight to the Debski vest thus making these features critical. Nothing in Greenberg or Debski suggests that they could be combined for massage purposes however. Neither reference discusses massaging therapy or massage tools. Any suggestion that they be combined is speculative and based on hindsight.

Further, the combination with Prince is equally speculative and provides no advantage. As clear, each compartment in Prince is vertically situated. As such, these vertical pockets would not accommodate the specific placement and orientation of massage tools, as contemplated by the present invention. Naturally, massage tools would simply fall to the bottom of these pockets, thus limiting the possible positions and orientations. Again, the combination of

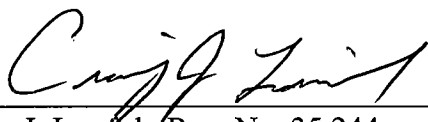
these references is simply hindsight based upon the invention and concepts disclosed by the present invention. As is clearly understood, the use of hindsight and related speculation is not permitted. In this case, the necessary motivation to combine references is simply lacking.

Based on the foregoing, Applicant respectfully asserts that the claimed invention is nonobvious, and the rejection pursuant to 35 U.S.C. § 103(a) is inappropriate. Applicant respectfully requests the rejection be withdrawn and a notice of allowance be issued.

### **Conclusion**

Applicant submits that, for at least the reasons stated above, all pending claims are allowable over the art of record and respectfully requests that a Notice of Allowance be issued in this case. If the Examiner believes that a teleconference would be of value in expediting the allowance of the pending claims, the undersigned can be reached at the telephone number listed below. If any fees are due in connection with the filing of this paper, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901 (Reference No. 22330-301).

Respectfully submitted,

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